

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #9	CCRB Case #: 201506328	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/22/2014 10:45 PM	Location of Incident: Utica Avenue and Empire Boulevard	Precinct: 71	18 Mo. SOL 2/22/2016	EO SOL 2/22/2016	
Date/Time CV Reported Fri, 07/31/2015 9:12 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/31/2015 9:12 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Raymond Higgins	28788	941338	PBBS SU
2. POM Hugh Herbert	01343	930337	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Travis Alexander	20494	942936	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Raymond Higgins	Abuse: PO Raymond Higgins frisked § 87(2)(b)	
B.POM Hugh Herbert	Abuse: PO Hugh Herbert searched the car in which § 87(2)(b) was an occupant.	
C.POM Hugh Herbert	Discourtesy: PO Hugh Herbert spoke discourteously to § 87(2)(b)	

### Case Summary

On July 31, 2015, § 87(2)(b) filed this complaint with the CCRB via telephone (Board Review 13). On August 22, 2014, at approximately 10:45 p.m. § 87(2)(b) was operating a vehicle which § 87(2)(b) reported held one passenger in the front seat, § 87(2)(b). At the intersection of Utica Avenue and Empire Boulevard in Brooklyn, § 87(2)(b)'s vehicle was stopped by an unmarked police vehicle. Three plainclothes officers were inside of the unmarked police vehicle: PO Raymond Higgins, PO Hugh Herbert, and PO Travis Alexander.

§ 87(2)(b) alleged that after complying with an instruction to step out of his vehicle, PO Higgins immediately frisked his entire body (**Allegation A**). § 87(2)(b) alleged that he was led to the rear of his vehicle and PO Herbert searched his vehicle, including the glove compartment and center console (**Allegation B**). § 87(2)(b) was eventually placed in handcuffs. § 87(2)(b) alleged that when he asked why he was being arrested, PO Herbert told him to, "Shut the fuck up, we're going to tell you," (**Allegation C**).

§ 87(2)(b) was arrested as a result of the incident (Board Review 01). He was charged with § 87(2)(b).

There is no video footage of this incident.

This case was originally assigned to Ethan DeAngelo, and it was reassigned to Investigator Ben Gilmore on September 14, 2015.

This complaint was filed over 11 months after the incident date (Board Review 13). § 87(2)(b) said that he did not know about the Civilian Complaint Review Board until around the time he filed this complaint.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) was arrested and has an ongoing criminal case regarding this incident (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- A Notice of Claim inquiry was submitted with the New York City Comptroller's Office on October 13, 2015, and the results are pending. The results of the inquiry will be added to the case file upon receipt.

### Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one other CCRB complaint, § 87(2)(b)
- PO Raymond Higgins has been a member of service for nine years. Six CCRB allegations have been made against PO Higgins in four separate cases, but there are no substantiated CCRB allegations against him. One previous frisk allegation was pleaded

against PO Higgins, dating back to 2008, and that case was closed as ‘Complaint Withdrawn’ (Board Review 05).

- PO Hugh Herbert has been a member of service for 13 years. 10 CCRB allegations have been made against him in seven separate cases, but there are no substantiated CCRB allegations against him. One previous discourtesy allegation was pleaded against PO Herbert dating back to 2007, and it was closed as ‘Unsubstantiated’ (Board Review 06).
  - CCRB case #201504141 remains open, and to date, PO Herbert is the subject of five allegations in this case, one of which is a vehicle search.

### **Potential Issues**

- The only known civilian witness in this case, § 87(2)(b) was unable to be located by the investigation. CCRB Complaint Tracking System, LexisNexis, BADS, Yellow Pages, and Department of Corrections searches for § 87(2)(b) yielded negative results (Board Review 07).

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- PO Raymond Higgins acknowledged frisking § 87(2)(b) (Board Review 15).  
§ 87(2)(g)
- § 87(2)(b) alleged that a white male officer who approached him from one of the front seats of an unmarked police vehicle, different from the officer who frisked him, searched his car and spoke discourteously to him (Board Review 14). It is undisputed that three officers were on the scene, identified by the investigation as PO Higgins, PO Herbert, and PO Alexander (Board Review 08). Aside from PO Higgins who acknowledged frisking § 87(2)(b) PO Herbert was the only white male officer on the scene (PO Alexander is black). Moreover, both PO Higgins and PO Alexander reported that PO Herbert was seated in one of the front seats and that PO Alexander was in the back seat. § 87(2)(g)  
§ 87(2)(g)

#### **Allegations not pleaded**

- § 87(2)(g) the driver of the vehicle, § 87(2)(b) was charged with two VTL infractions (Board Review 01).
- Abuse of Authority: A frisk allegation was not pleaded against PO Higgins for his frisk of the passenger of the vehicle, § 87(2)(b). Even though PO Higgins acknowledged frisking the passenger, § 87(2)(b) did not allege this and the investigation was unable to locate § 87(2)(b).

#### **Allegation A – Abuse of Authority: PO Raymond Higgins frisked § 87(2)(b)**

On August 22, 2014, at approximately 10:45 p.m. § 87(2)(b)'s vehicle was pulled over at the intersection of Empire Boulevard and Utica Avenue in Brooklyn by an unmarked police vehicle which contained PO Higgins, PO Herbert, and PO Alexander. PO Higgins' memo book (Board Review 09), the arrest report (Board Review 01), criminal court complaint report/complaint screening room sheet (Board Review 10), and CCRB testimony (Board Review 15) were all consistent regarding why the vehicle was stopped: broken brake lights and § 87(2)(b) was not wearing a seatbelt. PO Alexander reported that there was no particular condition, suspect,



16). PO Alexander said that as far as he could remember, neither PO Herbert nor PO Higgins searched the car in any capacity (Board Review 17). PO Higgins acknowledged retrieving the suspected forged credit cards which were in plain view on top of the cup holders, but he denied searching the vehicle any further at the scene (Board Review 15). Both PO Alexander and PO Higgins acknowledged that § 87(2)(b)'s car was transported to the stationhouse

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Discourtesy: PO Hugh Herbert spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that after he was placed in handcuffs, he asked PO Herbert why he was being arrested, and PO Herbert responded, “Shut the fuck up, we’re going to tell you,” (Board Review 14). § 87(2)(b) did not make this allegation when he initially filed the complaint with the CCRB on July 31, 2015 (Board Review 13), but rather in his in-person interview.

PO Herbert did not recall the incident, nor specifically did he recall if he used profanity during the incident (Board Review 16). PO Higgins did not recall if PO Herbert told § 87(2)(b) to “shut the fuck up,” (Board Review 15). PO Alexander did not recall PO Herbert saying “shut the fuck up,” or using any profanity during the incident (Board Review 17).

§ 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date